

House Bill 1181

By: Representatives Franklin of the 43rd, Hatfield of the 177th, Byrd of the 20th, Knox of the 24th, and Mangham of the 94th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 17 of the Official Code of Georgia Annotated, relating to criminal
2 law and criminal procedure, respectively, so as to change the term "victim" to the term
3 "accuser" in the context of a number of statutes making reference to circumstances where
4 there has not yet been a criminal conviction; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 16 of the Official Code of Georgia Annotated, relating to criminal law, is amended by
9 revising Code Section 16-5-93, relating to notice of release or escape of persons accused of
10 stalking, as follows:

11 "16-5-93.

12 (a) The ~~victim~~ person making an accusation of stalking or aggravated stalking shall be
13 entitled to notice of the release from custody of the person arrested for and charged with
14 the offense of stalking or aggravated stalking and to notice of any hearing on the issue of
15 bail for such person. No such notice shall be required unless the ~~victim~~ accuser provides
16 a landline telephone number other than a pocket pager or electronic communication device
17 number to which such notice can be directed.

18 (b) The law enforcement agency, prosecutor, or court directly involved with the ~~victim~~
19 accuser at the outset of a criminal prosecution for the offense of stalking or aggravated
20 stalking shall advise the ~~victim~~ accuser of his or her right to notice and of the requirement
21 of the ~~victim's~~ accuser's providing a landline telephone number other than a pocket pager
22 or electronic communication device number to which the notice of custodial release or bail
23 hearing can be directed. Such ~~victim~~ accuser shall transmit the telephone number described
24 in this subsection to the court and custodian of the person charged with stalking or
25 aggravated stalking.

(c) Upon receipt of the telephone number, the custodian of the person charged with stalking or aggravated stalking shall take reasonable and necessary steps under the circumstances to notify the victim accuser of the person's release from custody. Such notice shall, at a minimum, include:

(1) Prior to the person's release, placing a telephone call to the number provided by the victim accuser and giving notice to the victim accuser or any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine; and

(2) Following the person's release, if the custodian is unable to notify the victim accuser by the method provided in paragraph (1) of this subsection, telephoning the number provided by the victim accuser no less than two times in no less than 15 minute intervals within one hour of custodial release and giving notice to the victim accuser or to any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine.

(d) Upon receipt of the telephone number, the court conducting a hearing on the issue of bail shall take reasonable and necessary steps under the circumstances to notify the victim accuser of any scheduled hearing on the issue of bail. Such notice shall, at a minimum, include placing a telephone call to the number provided by the victim accuser prior to any scheduled hearing on the issue of bail.

(e) Notwithstanding any other provision of this Code section, a scheduled bail hearing or the release of the person charged with stalking or aggravated stalking shall not be delayed solely for the purpose of effectuating notice pursuant to this Code section for a period of more than 30 minutes.

(f) Upon the person's release or escape from custody after conviction and service of all or a portion of a sentence, notification to the victim shall be provided by the State Board of Pardons and Paroles as set forth in Code Sections 42-9-46 and 42-9-47.

(g) This Code section shall not apply to a custodian who is transferring a person charged with stalking or aggravated stalking to another custodian in this state.

(h) As used in this Code section, the term 'custodian' means a warden, sheriff, jailer, deputy sheriff, police officer, officer or employee of the Department of Juvenile Justice, or any other law enforcement officer having actual custody of an inmate.

(i) A custodian or his or her employing agency shall not be liable in damages for a failure to provide the notice required by this Code section, but the custodian shall be subject to appropriate disciplinary action including termination for such failure."

SECTION 2.

Said Title 16 is further amended in Code Section 16-6-1, relating to the crime of rape, by revising subsection (c) as follows:

"(c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the ~~victim~~ accuser of the alleged ~~crime~~ perpetrator, the law enforcement agency investigating the alleged crime shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence."

SECTION 3.

Said Title 16 is further amended in Code Section 16-12-100.3, relating to the crime of obscene telephone contact with a child, by revising subsection (b) as follows:

"(b) A person 17 years of age or over commits the offense of obscene telephone contact with a child if that person has telephone contact with an individual whom that person knows or should have known is a child, and that contact involves any aural matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse which is intended to arouse or satisfy the sexual desire of either the child or the person, provided that no conviction shall be had for this offense on the unsupported testimony of the ~~victim~~ accuser."

SECTION 4.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by revising Code Section 17-4-20.1, relating to investigation of incidents of alleged family violence, as follows:

"17-4-20.1.

(a) Whenever a law enforcement officer responds to an incident in which an act of family violence, as defined in Code Section 19-13-1, has been committed, the officer shall not base the decision of whether to arrest and charge a person on the specific consent of the ~~victim~~ accuser or on a request by the ~~victim~~ accuser solely or on consideration of the relationship of the parties. No officer investigating an incident of family violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention.

(b) Where complaints of family violence are received from two or more opposing parties, the officer shall evaluate each complaint separately to attempt to determine who was the primary aggressor. If the officer determines that one of the parties was the primary physical aggressor, the officer shall not be required to arrest any other person believed to have

committed an act of family violence during the incident. In determining whether a person is a primary physical aggressor, an officer shall consider:

- (1) Prior family violence involving either party;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The potential for future injury; and
- (4) Whether one of the parties acted in self-defense.

(c) Whenever a law enforcement officer investigates an incident of family violence, whether or not an arrest is made, the officer shall prepare and submit to the supervisor or other designated person a written report of the incident entitled 'Family Violence Report.' Forms for such reports shall be designed and provided by the Georgia Bureau of Investigation. The report shall include the following:

- (1) Name of the parties;
- (2) Relationship of the parties;
- (3) Sex of the parties;
- (4) Date of birth of the parties;
- (5) Time, place, and date of the incident;
- (6) Whether children were involved or whether the act of family violence was committed in the presence of children;
- (7) Type and extent of the alleged abuse;
- (8) Existence of substance abuse;
- (9) Number and types of weapons involved;
- (10) Existence of any prior court orders;
- (11) Type of police action taken in disposition of case, the reasons for the officer's determination that one party was the primary physical aggressor, and mitigating circumstances for why an arrest was not made;
- (12) Whether the ~~victim~~ accuser was apprised of available remedies and services; and
- (13) Any other information that may be pertinent.

(d) The report provided for in subsection (c) of this Code section shall be considered as being made for statistical purposes only and where no arrests are made shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50. However, upon request, a defendant who has been arrested for an act of family violence or the ~~victim~~ accuser shall be entitled to review and copy any report prepared in accordance with this Code section relating to the defendant.

(e) Each police department, including local precincts and county sheriff departments, shall report, according to rules and regulations of the Georgia Crime Information Center, all family violence incidents, both arrests and nonarrests, to the Georgia Bureau of Investigation, which shall compile and analyze statistics of family violence crimes and

cause them to be published annually in the Georgia Uniform Crime Reports. An offense shall be counted for each incident reported to the police. A zero shall be reported if no incidents have occurred during the reporting period."

SECTION 5.

Said Title 17 is further amended in Code Section 17-6-1, relating to forums and procedure for bail, by revising subsections (b) and (f) as follows:

"(b)(1) All offenses not included in subsection (a) of this Code section are bailable by a court of inquiry. Except as provided in subsection (g) of this Code section, at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail.

(2) Except as otherwise provided in this chapter:

(A) A person charged with violating Code Section 40-6-391 whose alcohol concentration at the time of arrest, as determined by any method authorized by law, violates that provided in paragraph (5) of subsection (a) of Code Section 40-6-391 may be detained for a period of time up to six hours after booking and prior to being released on bail or on recognizance; and

(B) When an arrest is made by a law enforcement officer without a warrant upon an act of family violence pursuant to Code Section 17-4-20, the person charged with the offense shall not be eligible for bail prior to the arresting officer or some other law enforcement officer taking the arrested person before a judicial officer pursuant to Code Section 17-4-21.

(3)(A) Notwithstanding any other provision of law, a judge of a court of inquiry may, as a condition of bail or other pretrial release of a person who is charged with violating Code Section 16-5-90 or 16-5-91, prohibit the defendant from entering or remaining present at the ~~victim's~~ accuser's school, place of employment, or other specified places at times when the ~~victim~~ accuser is present or intentionally following such person.

(B) If the evidence shows that the defendant has previously violated the conditions of pretrial release or probation or parole which arose out of a violation of Code Section 16-5-90 or 16-5-91, the judge of a court of inquiry may impose such restrictions on the defendant which may be necessary to deter further stalking of the ~~victim~~ accuser, including but not limited to denying bail or pretrial release."

"(f)(1) Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, a person

166 charged with committing any offense shall be released from custody upon posting bail
167 as fixed in the schedule.

168 (2) For offenses involving an act of family violence, as defined in Code Section 19-13-1,
169 the schedule of bails provided for in paragraph (1) of this subsection shall require
170 increased bail and shall include a listing of specific conditions which shall include, but
171 not be limited to, having no contact of any kind or character with the victim accuser or
172 any member of the victim's accuser's family or household, not physically abusing or
173 threatening to physically abuse the victim accuser, the immediate enrollment in and
174 participation in domestic violence counseling, substance abuse therapy, or other
175 therapeutic requirements.

176 (3) For offenses involving an act of family violence, the judge shall determine whether
177 the schedule of bails and one or more of its specific conditions shall be used, except that
178 any offense involving an act of family violence and serious injury to the victim accuser
179 shall be bailable only before a judge when the judge or the arresting officer is of the
180 opinion that the danger of further violence to or harassment or intimidation of the victim
181 accuser is such as to make it desirable that the consideration of the imposition of
182 additional conditions as authorized in this Code section should be made. Upon setting
183 bail in any case involving family violence, the judge shall give particular consideration
184 to the exigencies of the case at hand and shall impose any specific conditions as he or she
185 may deem necessary. As used in this Code section, the term 'serious injury' means bodily
186 harm capable of being perceived by a person other than the victim accuser and may
187 include, but is not limited to, substantially blackened eyes, substantially swollen lips or
188 other facial or body parts, substantial bruises to body parts, fractured bones, or permanent
189 disfigurements and wounds inflicted by deadly weapons or any other objects which, when
190 used offensively against a person, are capable of causing serious bodily injury.

191 (4) If probable cause is shown that the offense charged is in furtherance of a pattern of
192 criminal gang activity as defined by Code Section 16-15-3, the court shall require
193 increased bail and shall include as a condition of bail or pretrial release that the defendant
194 shall not have contact of any kind or character with any other member or associate of a
195 criminal street gang and that the defendant shall not have contact of any kind or character
196 with the victim accuser or any member of the victim's accuser's family or household.

197 (5) For offenses involving violations of Code Section 40-6-393, bail or other release
198 from custody shall be set by a judge on an individual basis and not a schedule of bails
199 pursuant to this Code section."

SECTION 6.

Said Title 17 is further amended in Code Section 17-6-1.1, relating to electronic pretrial release monitoring, by revising paragraph (3) of subsection (e) as follows:

"(3) Compliance with any court orders or special conditions of bond which may include an order directing that no contact, direct or indirect, be made with the ~~victim~~ accuser or forbidding entry upon, about, or near certain premises;"

SECTION 7.

Said Title 17 is further amended in Code Section 17-10-15, relating to human immunodeficiency virus testing of criminal defendants, by revising subsection (b) as follows:

"(b) ~~A victim~~ An accuser or the parent or legal guardian of a minor or incompetent ~~victim~~ accuser of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by subsection (g) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human immunodeficiency virus and consent to the release of the test results to the ~~victim~~ accuser. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Community Health. The cost of the test shall be borne by the ~~victim~~ accuser or by the arrested person, in the discretion of the court."

SECTION 8.

Said Title 17 is further amended in Code Section 17-16-4, relating to discovery disclosure in criminal cases, by revising paragraph (4) of subsection (a) as follows:

"(4) The prosecuting attorney shall, no later than ten days prior to trial, or as otherwise ordered by the court, permit the defendant at a time agreed to by the parties or ordered by the court to inspect and copy or photograph a report of any physical or mental examinations and of scientific tests or experiments, including a summary of the basis for the expert opinion rendered in the report, or copies thereof, if the state intends to introduce in evidence in its case-in-chief or in rebuttal the results of the physical or mental examination or scientific test or experiment. If the report is oral or partially oral, the prosecuting attorney shall reduce all relevant and material oral portions of such report to writing and shall serve opposing counsel with such portions no later than ten days prior to trial. Nothing in this Code section shall require the disclosure of any other material,

234 note, or memorandum relating to the psychiatric or psychological treatment or therapy
235 of any ~~victim~~ accuser or witness."

236 **SECTION 9.**

237 All laws and parts of laws in conflict with this Act are repealed.